

SERVICE DATE – FEBRUARY 6, 2015

SURFACE TRANSPORTATION BOARD

Docket No. FD 35873

NORFOLK SOUTHERN RAILWAY COMPANY—ACQUISITION AND OPERATION—  
CERTAIN RAIL LINES OF THE DELAWARE AND HUDSON RAILWAY COMPANY,  
INC.

MOTION FOR PROTECTIVE ORDER

Decision No. 5

Decided: February 5, 2015

By motion filed on January 14, 2015, James Riffin (Riffin) seeks a protective order under 49 C.F.R. § 1104.14 to protect material containing proprietary and commercially sensitive information that may be filed during this proceeding. Included as an Appendix to the motion are a proposed Protective Order and a Highly Confidential Undertaking. Riffin states that the protective order is necessary to protect highly confidential documents and information, including “marketing and operational information.”<sup>1</sup>

On January 20, 2015, Norfolk Southern Railway Company (NSR) filed a reply to Riffin’s motion. In that reply, NSR states that Riffin’s motion should be denied, as there is already a protective order on file in this proceeding that extends to Riffin. NSR further states that there is no policy justification or legal support for the issuance of two protective orders in this proceeding. NSR notes that the existing protective order in this matter is consistent with protective orders previously issued by the Board and addresses the concerns raised in Riffin’s motion.

Riffin’s motion for protective order will be denied. Riffin’s motion does not present any argument as to why the existing protective order in this proceeding is not sufficient to protect Riffin’s proprietary and commercially sensitive information. In fact, the existing protective order in this matter, issued as Decision No. 2,<sup>2</sup> is sufficient to protect the types of information

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<sup>1</sup> Riffin’s motion does not specify what types of highly confidential information Riffin seeks to submit under the proposed Protective Order. The motion states that “[t]he highly confidential portion [of his motion] is being sent to the STB via overnight delivery service.” As of the date of issuance of this order, however, the Board has not received that submission. Regardless, as discussed further in this decision, the existing protective order in this matter extends to any highly confidential information that Riffin may file.

<sup>2</sup> See Decision No. 2, Motion for Protective Order, Norfolk S. Ry.—Acquis. & Operation—Certain Rail Lines of the Del. & Hudson Ry., FD 35873 (STB served Dec. 17, 2014) (Decision No. 2).

Riffin seeks to file before the Board. The existing protective order also applies to any party to this proceeding. Thus, as a party of record in this proceeding,<sup>3</sup> Riffin may protect his confidential or highly confidential information by filing it under that protective order.<sup>4</sup>

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The motion for protective order is denied.
2. This decision is effective on the service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

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<sup>3</sup> See Decision No. 3, Service List 6, Norfolk S. Ry.—Acquis. & Operation—Certain Rail Lines of the Del. & Hudson Ry., FD 35873 (STB served Jan. 13, 2015).

<sup>4</sup> See Decision No. 2, Protective Order, at ¶¶ 6 and 7 (describing procedures for designating materials submitted to the Board as Confidential or Highly Confidential, and stating that these procedures apply to “any party to these Proceedings”).